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Subject:— Opinion under the Hoarding and Profiteering Prevention Ordinance, 1943

P.3/E

File No. O/H.P.P.O/48

Gen. 191 c.

G/20/48

CONTENTS.

Legal Department File No. O. /HPPO/ 48.

Sr.No.	R. I. / O. No.	Subject	Pages.
		Opinions under the Hoarding and Profiteering Prevention Ordinance, 1943.	
1.	O/194 27-4-48.	Draft sanction order -prosecution of Mr. Chhotalal Devsibhai Shah and Mr. Keshavlal Devji Sanghavi partners in the firm of Bharat Light House Bombay for breach of the provision of clause 4 (1)(c)	1-4. (copies not made)
2.	4134 28-4-48.	Section 6. Whether on the evidence available prosecution for breach section 6 can be succeasfully ~~broached~~ launched against the firm m/s Fulchand vs. Sons for black marketing in woollen cloth.	5-6.

V.V.K. 10/7/56/

5C.

NICB 13/7

PHB 13/7

Office of the R.L.A.

The Police Prosecutor's opinion does not appear to be correct. There is evidence to prove that the three sales were made by one Mr. Virkar the employee of the firm. Though there is no direct evidence to prove that the proprietor was present in the shop or that the conditional sales took place under his instructions, there is a difference between sales at black market prices and conditional sales. In case of black market sales, there is a likelihood of the excess price going in the pockets of the employees. There is no such possibility in respect of conditional sales as the price of the other article sold is entered in cash memo and the employee is not likely to get any benefit out of it behind the back of his employer. Apart from this practical aspect of the case, the legal position as stated by the Police Prosecutor is also not correct. Though Ordinance LIII of 1944 under which Sections 4(3) and 6(5) were incorporated in the Hoarding and Profiteering Prevention Ordinance, 1943 , was repealed by Ordinance I of 1946, the effect of this repeal does not result in deleting the said Sections. from the Hoarding and Profiteering Prevention Ordinance. Section 3(a) of Ordinance I of 1946 provides that the repeal by this Ordinance of any Ordinance by which thetext of any law was amended by the express omission, insertion or substitution of any matter, does not affect the continuance of any such amendement in operationat the commencement of this Ordinance unless a differenet intention was expressly s ated in the Ordinance by which

the amendment was made . Inspite of the repeal of Ordinance LIII of 1944,Sections 4(3) and 6(5) therefore continue to form part of the Hoarding and Profiteering Previntion Ordinance.

Section 6(1) of the Hoarding and Profiteering Prevention Ordinance provides that no dealer shall sell or offer for sale an article for a consideration which is unreasonable. Section 6(2)(a) provides that a consideration is unreasonable if the purchaser is , as a condition of sale, required to purchase at the same time any other article. In this case as the purchasers of woolen suitings were required to purchase a pair of socks, there is a clear contra-vention of Section 6 of the Hoarding and Profiteering Prevention Ordinance .

The Privy Council case Srinivas Malla Pairdiya vs . Emperor 49 B L R 688 and the recent judgment of the High Court in Motiram Desai's case relate to offences under the Defence of India Rules where there was no provisions similar to Section 6(5) of the Hoarding and Profiteorin g Prevention Ordinance under which the onus is on the dealer to prove that he exercised due diligence to prevent the contravention and the dealer is liable to punishment whether he was present or not. The sales took place on 4th June 1946 i.e. before the Hoarding and Profiteering Prevention Ordinance expired and a prosecution against both the proprietor and him the servant can now be filed inrespect of the breach which occurred before the Hoarding and Profiteering Prevention Ordinance expired.

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Remembrancer of Legal Affairs.

U.O.R. to C.S.D. No. 4134 , dated the 28th April 1948.

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